ment and the Plaintiffs, accordingly, are in my view entitled to an injunction.

There will be judgment for the Plaintiffs with costs and $100 damages and an injunction in terms of prayer 1 of their Claim and the injunction be suspended for a period of sixty days to enable the Defendants to effect a change of their name to a name acceptable to the Registrar of Companies which does not include the name "Excelsior".

Claim allowed.

Solicitors : *Drew & Napier; Netto Low & Partners.*

PUBLIC PROSECUTOR v. WONG HONG TOY & ANOR.

WONG HONG TOY & ANOR. v. PUBLIC PROSECUTOR

[A. Cr. J. (Wee Chong Jin C.J.) April 18, 1985]

[Singapore – Magistrate's Appeal Nos. 8, 9, 11, 12, & 13 of 1984 and Magistrate's Appeal Nos. 14 & 15 of 1984]

Criminal Law and Procedure – Accounts of Society – False statement and declaration – Cheques not accounted for – Whether Court authorized by RSC to receive declaration as evidence – Penal Code (Cap. 103), ss. 193 & 199 – R.S.C. 1970, O. 30 rr. 4(1), (2), (3) & 4, O.41 r. 5(2) – Statutory Declarations Act, 1835, ss. 2, 3 & 4.

Criminal Law and Procedure – Cheques endorsed in favour of third parties – Whether property of Society – Receiver – Preventing distribution to creditors – Fraud – Penal Code, ss. 34 & 421.

Company Law – Societies – Unregistered companies – Insolvency – Whether Society can be wound-up – Appointment of receivers – Companies Act (Cap. 185), ss. 314 & 315 – Societies Act (Cap. 262) – Bankruptcy Act (Cap. 18).*

Penal Code, ss. 34, 193, 199 & 421 – False statement – Fraudulent removal of property.

These seven appeals were heard before the learned Chief Justice in the High Court. They arose out of a joint trial of five charges against Wong Hong Toy ("Wong") and J.B. Jeyaretnam, an advocate and solicitor, ("Jeyaretnam"), respectively the Chairman and Secretary-General of the Workers' Party. In two of these five charges (DAC 4151/83 & DAC 4152/83), they were charged separately under section 199 read with section 193 of the Penal Code. In the other three charges (DAC 4153/83, DAC 4154/83, & DAC 4154A/83) they were charged jointly under section 421 and section 34.

The five charges centred around three cheques for the respective sums of $2,000, $200 and $400. In each of these cheques, the name of the Workers' Party as the payee was written by the person who issued it. All these cheques were delivered by the drawers to either Wong or Jeyaretnam. None of these cheques was paid into the account which the Workers' Party maintained with its bankers. The $2,000 cheque was endorsed by Wong and Jeyaretnam in favour of and paid into the account of a third party. The $200 cheque was endorsed by Jeyaretnam and the Treasurer of the Workers' Party and paid by Wong into his personal bank account. The $400 cheque was not endorsed by the Workers' Party and was cashed by an unknown person. The fact of the receipt of the three cheques by the Workers' Party did not appear in any of the Workers' Party account books or in any statements of accounts prepared by its Treasurer for the period January 1, 1982 to June 16, 1982. Having failed in its defamation actions, the Workers' Party owed one Tay Boon Too taxed costs of $17,101 as at July 10, 1975. It also owed the Attorney-General taxed costs of $15,189 as at July 1975. On execution by Tay Boon Too, the Workers' Party had $18.47 in its bank account. Subsequently, the Official Receiver was on June 11, 1982 appointed receiver of the assets of the Workers' Party. Wong and Jeyaretnam made a joint declaration of accounts on August 3, 1982 before a Commissioner for Oaths in terms of the draft of the receiver. As a result, they were charged on the five charges.

Held, in respect of the section 199 Penal Code charges (DAC 4151/83 'DAC 4152/83); (1) the declaration, being a document permitted by O.41, r.5(2), RSC, to form part of the affidavit accompanying the receiver's own account presented to the High Court for passing and certification, was a declaration which the Court was authorized by the Rules of the Supreme Court to receive as evidence in the receivership proceedings;

(2) the trial judge erred in law in finding that the prosecution had failed to prove a *prima facie* case under section 199 and in acquitting Wong and Jeyaretnam without calling on each of them to enter upon his defence;

(3) there should be a fresh joint trial before another judge.

Held, in respect of the section 421 Penal Code charges: (1) the defence that the property in the $2,000 cheque never passed to the Workers' Party was rejected. The cheque was a gift from Dr. Ivy Chew to the Workers' Party. In all the circumstances, the inference clearly arises that by their acts, Wong and Jeyaretnam intended to place the proceeds of the cheque, when cashed, out of the reach of creditors of the Workers' Party and in particular, Tay Boon Too, a judgment creditor, in circumstances which constitute an intent to defraud within the meaning of section 421;

(2) at all material times, the $200 cheque given by Ping was the property of the Workers' Party. The inference is irresistible that by their acts, Wong and Jeyaretnam intended to place the proceeds of the $200 cheque out of the reach of the creditors of the Workers' Party and in particular, Tay Boon Too, in circumstances which constitute an intent to defraud within the meaning of section 421.

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* See ss. 350 & 351 of Reprint of The Companies Act (Cap. 185 of The Revised Edition) 1985.

(3) the $400 cheque was a donation by Willie Lim to the Workers' Party. The arguments of Wong and Jeyaretnam were rejected. The trial judge was right in finding that Jeyaretnam was fully aware of what had taken place and that from the conduct of Wong and Jeyaretnam, when the cheque was retained by Wong and then handed to an unknown person to be encashed on July 2, 1982 instead of being handed over to the receiver, they were acting in concert;

(4) the appeals against acquittals of Wong and Jeyaretnam on the section 421 Penal Code charges (DAC 4153/83 and DAC 4154A/83) were allowed;

(5) the appeals of Wong and Jeyaretnam against their convictions on the charge numbered DAC 4154/83 were dismissed;

(6) Wong and Jeyaretnam are found guilty on charges numbered DAC 4153/83 and DAC 4154A/83 and sentenced to a fine of $1,000 each in respect of each charge, in default three weeks' imprisonment;

(7) the appeal by the Public Prosecutor against the adequacy of the fines ($1,000 each) imposed on Wong and Jeyaretnam was dismissed – in respect of charge numbered DAC 4154/83.

Cases referred to:

(1) *R.* v. *Low Toh Cheng* [1941] M.L.J. 1.
(2) *Lee Sang Cheah* v. *R.* [1946] M.L.J. 22.
(3) *Ismail Peer Mohamed* v. *The King* A.I.R. 1938 Rangoon 242.
(4) *Re St. James's Club* (1852) 42 E.R. 920.
(5) *Independent Protestant Loan Fund Society* [1895] I.R. 1.
(6) *Re Planet Benefit Building and Investment Society* L.R. 14 Eq. 441.
(7) *Re Ironfounders' (Bradford Branch) Social Club and Institute* (1923) 67 Sol. J. 516.
(8) *Feeney and Shannon* v. *MacManus & Ors.* [1937] I.R. 32.

MAGISTRATE'S APPEALS.

Tan Teow Yeow (Sr. State Counsel) (*John Koh*, State Counsel with him) for the Public Prosecutor.

J.B. Jeyaretnam for the 1st respondent in MA 8/84, 9/84, 11/84, 12/84 & 13/84 and for 1st appellant in MA 14/84 & 15/84.

S. Anandan for 2nd respondent in MA 8/84, 9/84, 11/84, 12/84 & 13/84, and for 2nd appellant in MA 14/84 & 15/84.

Cur. Adv. Vult.

Wee Chong Jin C.J.: These seven appeals arose out of a joint trial of five charges brought against Wong Hong Toy and J.B. Jeyaretnam. In two of the five charges (numbered DAC 4151/83 and DAC 4152/83) they were charged separately and in the other three (numbered DAC 4153/83, DAC 4154/83 and DAC 4154A/83) they were charged jointly.

These five charges read as follows:

"DAC 4151/83

You, Wong Hong Toy, are charged that you, on or about August 3, 1982 at Singapore made a false statement in a declaration which was by law receivable as evidence before Daljit Singh a Commissioner for Oaths when you stated that the

(a) Receipts and Payment Account for the period January 1, 1982 to June 16, 1982,

(b) Income and Expenditure Account for the period January 1, 1982 to June 16, 1982

(c) Balance Sheet as at June 16, 1982

drawn up by A Balakrishnan, the Treasurer of the Workers' Party, and affirmed by him in an affidavit dated July 6 1982, exhibited a true and fair view of the transactions and results for the period specified therein and of the state of affairs of the Workers' Party as at the date specified;

which you did not believe to be true touching a point material to the object for which the declaration was made namely the verification of the Accounts of the Workers' Party and have thereby committed an offence punishable under section 199 read with section 193 of the Penal Code (Chapter 103).

Particulars

1. That the accounts were false as they did not exhibit a true and fair view of the transactions and results for the period specified therein and of the state of affairs of the Workers' Party as at the date specified.

2. The following were specific instances each by themselves which made the accounts false namely:

(a) in that although a Bank of America cheque No. 053504 dated Jan 19 '82 for a sum of $2,000 drawn on the account of one Ivy Chew Wan Heong and made payable to the Workers' Party was received by the Workers Party on or about Jan 19 '82 this was not reflected in the said accounts of the Party.

Neither

(b) was it reflected in the said accounts when it was endorsed or paid over to M/s Murugason & Co by the Workers' Party.

(c) in that although an OUB cheque No. 097574 dated March 10 '82 for $200 drawn on the account of one Ping Koon Yam and made payable to the Workers' Party was received by the Workers' Party this was not reflected in the said accounts of the Party.

Neither

(d) was it reflected in the said Accounts when it was en-

dorsed or paid over to Wong Hong Toy by the Workers' Party.

(e) in that although an OCBC cheque No. 642426 for a sum of $400 dated May 22, 1982 drawn on the account of one Willie Lim Thian Tze was received by the Workers' Party this was not reflected or properly reflected in the said Accounts of the Party.

Neither

(f) was it reflected or properly reflected in the said Accounts when the cheque was endorsed or paid over to a person unknown.

DAC 4152/83

You, Joshua Benjamin Jeyaretnam, are charged that you on or about August 3, 1982 at Singapore made a false statement in a declaration which was by law receivable as evidence before Daljit Singh a Commissioner for Oaths when you stated that the:

(a) Receipts and Payment Account for the period January 1, 1982 to June 16, 1982,

(b) Income and Expenditure Account for the period January 1, 1982 to June 16, 1982;

(c) Balance Sheet as at June 16, 1982;

drawn up by A Balakrishnan, the Treasurer of the Workers' Party, and affirmed by him in an affidavit dated July 6, 1982, exhibited a true and fair view of the transactions and results for the period specified therein and of the state of affairs of the Workers' Party as at the date specified;

which you did not believe to be true touching a point material to the object for which the declaration was made namely the verification of the Accounts of the Workers' Party and have thereby committed an offence punishable under section 199 read with section 193 of the Penal Code (Chapter 103).

Particulars:

(Similar to Particulars in DAC 4151/83)

DAC 4153/83

You, Joshua Benjamin Jeyaretnam, Wong Hong Toy, are charged that you on a day in February 1982 at Singapore in furtherance of a common intention of you both, fraudulently delivered to R. Murugason & Co. a firm of solicitors, without adequate consideration property, namely a cheque for a sum of $2,000, belonging to the Workers' Party knowing it to be likely that you would thereby prevent the distribution of that property amongst the creditors of the Workers' Party in particular one Tay Boon Too and thereby committed an offence punishable under section 421 and read with section 34 of the Penal Code (Chapter 103).

DAC 4154/83

You, Joshua Benjamin Jeyaretnam, Wong Hong Toy, are charged that you on a day in July 1982 at Singapore in furtherance of a common intention of you both, fraudulently delivered to a person unknown, without adequate consideration, property, namely, a cheque for a sum of $400, belonging to the Workers' Party knowing it to be likely that you would thereby prevent the distribution of that property amongst the creditors of the Workers' Party in particular one Tay Boon Too and thereby committed an offence punishable under section 421 and read with section 34 of the Penal Code (Chapter 103).

DAC 4154A/83

You, Joshua Benjamin Jeyaretnam, Wong Hong Toy, are charged that you on or about March 12, 1982 at Singapore in furtherance of a common intention of you both, fraudulently delivered to Wong Hong Toy without adequate consideration, property, namely, a cheque for a sum of $200, belonging to the Workers' Party knowing it to be likely that you would thereby prevent the distribution of that property amongst the creditors of the Workers' Party in particular one Tay Boon Too and thereby committed an offence punishable under section 421 read with section 34 of the Penal Code (Chapter 103)."

At the conclusion of the prosecution's case the learned Senior District Judge ("the trial judge") acquitted and discharged both accused on the charges numbered DAC 4151/83 and DAC 4152/83. At the conclusion of the trial the trial judge acquitted and discharged both accused on the charges numbered DAC 4153/83 and DAC 4154A/83 but convicted them on the charge numbered DAC 4154/83 and sentenced each to pay a fine of $1,000.00. The Public Prosecutor now appeals against the acquittals and the sentences and both the accused now appeal against their convictions.

I will hereafter refer to Wong Hong Toy as "Wong" and J.B. Jeyaretnam as "Jeyaretnam". At all material times Wong was and is the Chairman and Jeyaretnam was and is the Secretary-General of the Workers' Party, a political party registered under the Societies Act (Cap. 62). The appellant Jeyaretnam was and is an advocate and solicitor practising under the firm name of Jeyaretnam & Co.

At the heart of these five charges were three cheques on each of which the name of the Workers' Party as the payee was written by the person who issued the cheque. The first cheque was a crossed cheque dated January 19, 1982 for $2,000.00 drawn by a Dr. Ivy Chew. The second cheque was originally an order cheque dated March 10, 1982 for $200.00 drawn by a Mr. Ping Koon Yam which was subsequently altered by him to a bearer cheque. The third cheque was a crossed cheque dated May 22, 1982 for $400.00 drawn by a Mr. Willie Lim Thian Tze which was subsequently altered by him to a cash cheque.

All these three cheques were delivered by the drawers either to Wong or Jeyaretnam but none of them were paid into the account which the Workers' Party maintained with the Bank of China. Dr. Chew's $2,000.00 cheque was endorsed to a firm of solicitors, Murugason & Co. by the Workers' Party on its behalf by Jeyaretnam and Wong who signed the endorsement as its Secretary-General and Chairman respectively. Ping's $200.00 was endorsed by the Workers' Party on its behalf by its Secretary-General, Jeyaretnam and by its Treasurer. Willie Lim's $400.00 cheque was not endorsed by the Workers' Party. It was cashed by an unknown person.

Dr. Chew's $2,000.00 cheque, as endorsed, was delivered by Wong to the indorsee, Murugason & Co. on February 16 or 17, 1982 and its proceeds were utilised to pay a judgment debt, not of the Workers' Party, but of a Madam Chiew, who was the mother of Jeyaretnam's election agent in the December 1980 General Elections. Ping's $200.00 cheque, as endorsed, was paid by Wong into his personal bank account with the Bank of America. Willie Lim's $400.00 cheque was cashed by an unknown person. The fact of the receipt of these three cheques by the Workers' Party did not appear in any of the Workers' Party account books or in any statements of accounts prepared by its Treasurer for the period January 1, 1982 to June 16, 1982.

Also central to these five charges were the following facts.

In 1972 and 1973 the Workers' Party commenced consolidated defamation actions in the High Court against one Tay Boon Too, then a Member of Parliament, and the Attorney-General representing the Department of Broadcasting. The Workers' Party's solicitors were J.B. Jeyaretnam & Co. These actions were unsuccessful as also were the appeals that followed. The Workers' Party was ordered to pay the defendants' costs which were taxed. As at July 10, 1975, the unpaid taxed costs owing to Tay Boon Too alone amounted to $17,101.00. On February 3, 1982 Tay Boon Too applied to Court for leave to levy execution for the unpaid costs. The application was served on J.B. Jeyaretnam & Co., the solicitors for the Workers' Party. The application was fixed for hearing before the Registrar on February 22, 1982.

On that day leave to levy execution was granted and on the same day an order *nisi* was granted to garnish the moneys of the Workers' Party in the Bank of China. The order *nisi* which was duly served on the Bank of China was made absolute on March 22, 1982. The Workers' Party had $18.47 in its bank account which was paid to Tay Boon Too's solicitors by the bank.

On May 22, 1982 Tay Boon Too applied to the High Court for the appointment of a receiver. On June 1, 1982 the Assistant Registrar of the Supreme Court made an order appointing Mr. Lim Ewe Huat, who was the Official Receiver, the receiver. The terms of Mr. Lim's appointment as receiver, contained in a further order dated June 11, 1982 empowered him "to receive the assets of (the Workers' Party) and all monies collected from members of the public by the officials and members of the (Workers' Party) and by others acting on behalf of the (Workers' Party) and pay thereout the monies due to Tay Boon Too from the (Workers' Party) by way of costs and interest thereon". On July 21, 1982 the receiver wrote to A. Balakrishnan, the Treasurer of the Workers' Party asking for "accounts of the Workers' Party for 1980, 1981 and up to June 3, 1982 and for all the relevant account books, vouchers and other accounting documents for this period".

Balakrishnan prepared and sent to the receiver a Receipts and Payments Account and an Income and Expenditure Account covering the period January 1, 1982 to June 16, 1982 as well as a Balance Sheet as at June 16, 1982. In an affidavit dated July 16, 1982 he affirmed that the accounts he had prepared were true to the best of his knowledge and belief.

Thereafter, the receiver drafted a joint statutory declaration to be made by Wong and Jeyaretnam, as Chairman and Secretary-General respectively of the Workers' Party, and sent the draft to them with a request to make a declaration in terms of that draft. They complied with the request and made jointly a declaration on August 3, 1982 before a Mr. Daljit Singh, a "Commissioner for Oaths".

As a result of these facts which I have outlined, which facts were not disputed, Wong and Jeyaretnam were charged on the aforesaid five charges. I shall deal with the section 199 Penal Code charges which were based on the joint declaration separately from the section 421 Penal Code charges.

The Section 199 Penal Code Charges.

The declaration made by Wong and Jeyaretnam

reads:

"STATUTORY DECLARATION

We, WONG HONG TOY (NRIC No: 0587950/G) and JOSHUA BENJAMIN JEYARETNAM (NRIC No: 0514243/A) being respectively the Chairman and Secretary-General of the Workers' Party, do hereby declare that the:

(a) Receipts and Payment Account for the period January 1, 1982 to June 16, 1982.

(b) Income and Expenditure Account for the period January 1, 1982 to June 16, 1982 and

(c) Balance Sheet as at June 16, 1982

drawn up by A. Balakrishnan, the Treasurer of the Workers' Party, and affirmed by him in an affidavit dated July 6 1982, exhibit a true and fair view of the transactions and results for the period specified therein and of the state of affairs of the Workers' Party as at the date specified.

DECLARED this 3rd)
)
day of August 1982.)

Sgd.
Wong Hong Toy
NRIC No: 0587950/G)

Sgd.
JOSHUA BENJAMIN
JEYARETNAM
(NRIC No: 0514243/A)

Before me,

Sgd. Daljit Singh
COMMISSIONER FOR OATHS"

Section 199 reads as follows:

"199. Whoever, in any declaration made or subscribed by him, which declaration any court of justice, or any public servant or other person, is bound or authorized by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence."

At the close of the prosecution's case the trial judge ruled that the declaration (P13A) was not a declaration which a court of justice was bound or authorised by law to receive as evidence of any fact because it did not contain the phrase "and I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act, 1835". That phrase is to be found in the Schedule of the Statutory Declarations Act (Cap. 13) (hereinafter referred to as "the Singapore Act"). The Singapore Act is a short enactment which so far as material reads:

"2. The Statutory Declarations Act, 1835, shall be deemed to be and to have been from the date of the passing thereof in force in Singapore.

3. A declaration made in the form in the Schedule shall be deemed to be a declaration made by virtue of the provisions of the said Act, and shall be sufficient for all purposes.

4. Declarations purporting to be made by virtue of the provisions of the said Act shall be deemed to be such declarations as are referred to in sections 199 and 200 of the Penal Code.

SCHEDULE

I, A.B., do solemnly and sincerely declare that
and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835."

The object of the Singapore Act was as expressly stated in the preamble, "to remove doubts concerning statutory declarations". It did so in section 2, by deeming the Statutory Declarations Act, 1835, an enactment of the United Kingdom legislature, to be and to have been from the date of the passing thereof in force in Singapore. In this appeal the deeming provisions of sections 3 and 4 have to be considered.

It is apparent that the declaration made by Wong and Jeyaretnam was not *made* in the form prescribed in the Schedule to the Singapore Act and so the prosecution could not rely on section 3 as proof that the declaration (P13A) was a declaration which a court of justice was bound or authorised by law to receive as evidence of any fact stated therein. However, it is contended before me by Mr. Tan Teow Yeow on behalf of the Public prosecutor that the declaration (P13A) was a declaration within the meaning of section 4. His argument, as I understand it, is that in deciding whether or not the declaration ("P13A") fell within section 4 of the Singapore Act, the trial judge was required to look, apart from the declaration itself, at the circumstances surrounding or leading up to the making of the declaration. He relies on the following circumstances, namely: –

"(i) The declaration itself was intituled 'Statutory Declaration';

(ii) the declaration was signed and declared by the declarants before a Commissioner for Oaths;

(iii) the unchallenged evidence of the receiver that he requested the declarants, who agreed, to make a joint statutory declaration to confirm the Workers' Party

accounts, as prepared by its Treasurer;

(iv) the unchallenged evidence contained in the written statement of Daljit Singh, the Commissioner for Oaths before whom the declaration ('P13A') was signed that Wong and Jeyaretnam swore joint Statutory Declaration made under the Statutory Declaration Act before him".

He submits that those circumstances show that the declaration ("P13A") was a declaration purporting to be made by virtue of the provisions of the United Kingdom Act.

In my judgment the circumstances relied on by Mr. Tan Teow Yeow were insufficient proof that the declaration ("P13A") was a declaration purporting to be made under the Statutory Declarations Act, 1835, within the meaning of section 4 of the Singapore Act. The expression "Statutory Declaration" in the declaration ("P13A") itself is clearly ambiguous and it cannot be read as "Statutory Declarations Act, 1835" or "Statutory Declaration made under the Statutory Declarations Act, 1835". Likewise, the other circumstances ((ii), (iii) and (iv) *supra*) were not *prima facie* evidence that the declaration ("P13A") was one purported to be made under the Statutory Declarations Act, 1835.

Finally, it is contended that, apart from the deeming provisions of the Singapore Act, the declaration was a declaration within the meaning of section 199 of the Penal Code. The argument is that the Registrar of Supreme Court (which expression includes an Assistant Registrar) is bound or authorised by law to receive the declaration as evidence of the facts therein stated in the receivership proceedings. Under Order 30 of the Rules of the Supreme Court a receiver appointed by the Court "must submit accounts to the Court" (Rule 4(1)), which "must be accompanied by an affidavit verifying it" (rule 4(2)), and rules 4(3) and 4(4) provide for the passing and certifying of the accounts by the Registrar. Under rule 5(2) of Order 41 an affidavit sworn for the purpose of interlocutory proceedings may contain statements of information or belief with the sources and grounds thereof.

In compliance with Order 30 the receiver submitted his accounts for the purpose of passing them verified by his affidavit to which was annexed the declaration ("P13A") as permitted by Order 41 rule 5(2), the receivership proceedings being interlocutory proceedings. Accordingly, it is submitted, the declaration ("P13A") which formed part of the receiver's affidavit was a declaration within the meaning of section 199 of the Penal Code.

The trial judge held that the declaration ("P13A") was not a declaration which the Court was bound or authorised by law to receive as evidence in the receivership proceedings because the prosecution "had completely misconceived the nature of the receivership proceedings in the High Court, but had also misconstrued the rules of court governing such proceedings." He so held because in his view under Order 30 the receiver was not required by law to prepare accounts of the Workers' Party to be presented to Court for the purposes of its being passed by the Court.

In my judgment, the declaration ("P13A") being a document which was permitted by Order 41 rule 5(2) to form part of the affidavit accompanying the receiver's own account presented to the High Court for passing and certification, was a declaration which the Court was authorised by the Rules of the Supreme Court to receive as evidence in the receivership proceedings. It is immaterial that the receiver was not required under Order 30 to prepare the Workers' Party accounts for presentation and passing by the Court in the receivership proceedings. It was a document which the receiver was permitted by the rules of Court to place before the Court in the receivership proceedings and in particular it was a document which the receiver could properly place before the Court in order that his own accounts presented to the Court as required by Order 30 could be passed and certified.

Accordingly, in my judgment the trial judge erred in law in finding that the prosecution had failed to prove a *prima facie* case under section 199 and in acquitting Wong and Jeyaretnam without calling on each of them to enter upon his defence. In all the circumstances the order I make is that there be a fresh joint trial before another judge.

The Section 421 Penal Code Charges

I turn now to consider the appeals in respect of the three section 421 Penal Code charges against Wong and Jeyaretnam. In each of these appeals the contention is raised that the trial judge erred in law and in fact.

It is settled law that this court in the exercise of its statutory appellate criminal jurisdiction has

full power to review at large the evidence upon which an order of conviction or acquittal was founded and to reach the conclusion that upon that evidence the order should be reversed. In reviewing the evidence and before reaching its conclusions upon fact this court should always give proper weight and consideration to such matters as (1) the views of the trial judge as to the credibility of witnesses; (2) the presumption of innocence in favour of the accused; (3) the right of the accused to the benefit of the doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses. Expressed in another way the power of this court is unfettered provided it acts in accordance with rules and principles well known and recognised in the administration of justice. (See *R.* v. *Low Toh Cheng*[1] and *Lee Sang Cheah* v. *R.*[2]).

1. *The appeal against conviction in respect of Dr. Ivy Chew's $2000 cheque.*

The undisputed facts can be outlined briefly. A Dr. Ivy Chew issued a crossed cheque dated January 19, 1982 for $2000 in favour of the Workers' Party which she sent by post to and was received by Jeyaretnam whom she knew and who was the Secretary-General of the Workers' Party. At that time the Workers' Party owed a judgment creditor, one Tay Boon Too, $17,101 in respect of unpaid taxed costs and also owed the Attorney-General, another judgment creditor, a substantial sum in respect of unpaid taxed costs. The Workers' Party had insufficient assets to pay these judgment debts. After receiving the cheque, Jeyaretnam did not pay it into the Workers' Party bank account. Instead, he and Wong endorsed, as Secretary-General and Chairman respectively of the Worker's Party, on the back of the cheque the words "Pay to Murugason & Co."

Murugason & Co. were the solicitors of a Madam Chiew who had a judgment against her for $5,245.25. The judgment creditor had on January 15, 1982 sent a letter of demand to her solicitors giving her seven days' notice to pay the judgment debt. Madam Chiew's judgment debt was for taxed costs resulting from her unsuccessful Election Petition to unseat a person who had been elected as a Member of Parliament for the electoral division of Telok Blangah in the December 1980 General Election in which electoral division Jeyaretnam was the unsuccessful candidate. She was the mother of Jeyaretnam's election agent.

Jeyaretnam and Wong endorsed the cheque to enable Murugason & Co. as Madam Chiew's solicitors to make use of the proceeds to pay her judgment debt. The endorsed cheque was delivered by Wong to Murugason & Co. either on February 16 or 17, 1982 by which date Jeyaretnam and Wong knew that Tay Boon Too had applied to the High Court for leave to levy execution against the Workers' Party for his taxed costs. The proceeds of the cheque were subsequently sent by Murugason & Co. to the solicitors of Madam Chiew's judgment creditor.

In my opinion, on the facts as outlined, the cheque, till it was issued, remained the property of Dr. Chew. It was issued to the Workers' Party when Dr. Chew sent it to Jeyaretnam who on receipt of it had possession of it on behalf of the Workers' Party. In Jeyaretnam's hands the cheque as drawn was an instrument whereby the Workers' Party could obtain, out of moneys standing to the credit of Dr. Chew with her bank, $2000, the sum specified on the face of the cheque. When it was issued by her it became *prima facie* the property of the Workers' Party.

The defence of Jeyaretnam and Wong was that the property in the cheque never passed to the Workers' Party because Dr. Chew never intended to make a gift of it or of the sum specified on its face to the Workers' Party. The evidence led to support this defence was given by Jeyaretnam which is adequately set out in the following passage in the trial judge's Grounds of Decision. The passage reads as follows:

> "The defence consisted of a denial that the cheque belonged to the Party. Jeyaretnam alleged that the donor Dr. Ivy Chew, whom he had known 'for some years', had in a note accompanying the cheque and addressed to him personally, stated that it was to be used by him for any purpose he thought fit, for his political work generally or for the purpose of the opposition.
>
> He had understood from the note that the cheque for $2000/– 'was to be left entirely to me as to how I was to use it'. He further explained that at that time he was aware that Mdm Chiew's costs had to be paid, since 'the solicitors were threatening execution'. After discussing it with the co-accused, it was decided that 'we better give this to pay Mdm. Chew's costs.
>
> Having decided it, he then rang Dr. Ivy Chew 'quite soon after', and 'I confirmed with her that it was entirely up to me what I did with the money ... At no time since 19.1.82 I have had a complaint from Dr. Ivy Chew about the destination of her money. None whatsoever,' he declared (see page 170 of the Notes of Evidence)."

Although the trial judge was of the view that the question whether the cheque became the property of the Workers' Party depended on Dr. Chew's intention, he did not make an express finding as to Dr. Chew's intention. There are however two passages in it which deal with Dr. Chew's intention. One passage reads:

"At the conclusion of the trial, the only evidence I had concerning the intentions of both Dr. Chew and Ping when donating their respective cheques were the testimonies of both accused, although in the course of the prosecution's case, the defence had tendered two statutory declarations sworn to by Dr. Chew, albeit in another (the receivership) proceeding (exhibit D.4 and D.5), which substantially confirmed what the second accused had said regarding her donation."

The other passage reads:

"In respect of these two charges, the prosecution had to my mind failed to prove an essential ingredient of the offence, namely that the $2000 and $200 cheques were the property of the Workers' Party."

It seems to me implicit in these two passages that the trial judge's finding that the prosecution had failed to prove that the $2000.00 cheque was the property of the Workers' Party was because he construed the contents of Dr. Chew's two statutory declarations as "substantially confirming" Jeyaretnam's evidence and not because he found Jeyaretnam to be a credible witness whose evidence he accepted.

I must now consider whether or not this finding of the trial judge was right bearing in mind the general principles enumerated earlier in this judgment. The prosecution case was that the cheque as drawn by Dr. Chew was the best evidence of the person whom she intended to be the donee of her gift of $2000.00. At the time when she wrote on the face of the cheque the Workers' Party as the payee and crossed it, the clear and only plausible inference was that she intended the Workers' Party to be the donee of the sum specified on its face. That inference is supported by her posting the cheque to Jeyaretnam who was the Secretary-General of the Workers' Party. It seems to me obvious that the best evidence to refute that clear inference would be evidence from Dr. Chew. However, she was not called by the defence although she was available as a witness if the defence wished to call her.

The defence chose to rest its case upon Jeyaretnam's evidence alone on the question of Dr. Chew's intention. To refute Dr. Chew's intention as expressed on the face of the cheque the defence relied on Jeyaretnam's bare assertion that there was a note from her to him accompanying her cheque and Jeyaretnam's assertion that he had a subsequent telephone conversation with her as to the use to be made of its proceeds.

It will be seen from the second passage that I have quoted, wherein the trial judge stated that the only evidence he had concerning Dr. Chew's intention was the testimony of Jeyaretnam, that he ignored or failed to consider the evidence before him of Dr. Chew's intention as expressed on the face of her own cheque. The failure to do so was, in my opinion, a serious misdirection. On a review of the whole of the evidence I am satisfied that he was wrong in finding that the prosecution had failed to prove that the $2000.00 cheque was the property of the Workers' Party.

I am unable to accept Jeyaretnam's evidence that there was a note to him from Dr. Chew and consequently I do not accept his evidence of their subsequent telephone conversation for the following reasons. It was highly unlikely that Dr. Chew would write the words "Workers' Party" on the face of the cheque and send it to Jeyaretnam with a note, the contents of which were as related by Jeyaretnam, if she did not intend to donate the sum specified on its face to the Workers' Party. If her intention was different from that as expressed on the face of the cheque, her evidence was necessary to explain why she wrote the words "Workers' Party" on the face of the cheque when she intended someone else to be the donee of her $2000.00 gift and, if her intention was to donate the $2000.00 to Jeyaretnam to be used by him for any purpose he thought fit, it was essential for her to give an explanation why she named the Workers' Party and not Jeyaretnam as the payee on the face of her cheque.

Furthermore, in the two statutory declarations made by Dr. Chew which were in evidence she stated that she "volunteered the donation of $2000.00 with the *tacit understanding* that it be used at Mr. J.B. Jeyaretnam's discretion for the opposition" (the emphasis is mine). The ordinary meaning of the expression "tacit understanding" is an understanding that is not expressly stated but is implied and it follows that she was in effect saying in her statutory declarations that she did not expressly tell Jeyaretnam, but it was implied, that she left it entirely to him to use her gift at his discretion for the opposition. In my judgment, her statutory declarations, correctly understood, contradicted Jeyaretnam's evidence that

there was a note from her to him in which she said that it was entirely left to him to use her gift at his discretion for the opposition. It follows that the trial judge was wrong in his finding that her statutory declarations "substantially confirmed what (Jeyaretnam) had said regarding her donation."

Finally, on the question of Dr. Chew's intention I feel I should deal briefly with a comment by the trial judge on the fact that the prosecution did not call her as a witness. The trial judge said:

"The claims of the defence on the intention of the donors were strenuously disputed by the prosecution, and in the circumstances of the case, it was patently clear that the best evidence as to the intention of the donors in giving their respective cheques would have been the donors themselves. It was therefore most unfortunate that the Court was deprived of the opportunity of hearing their evidence, because the prosecution who had taken police statements from them in the course of police investigations, and who had subpoenaed them to testify, elected not to call them to testify in support of its allegations."

In my judgment, it was sufficient for the prosecution to rely on the cheque itself as proof that the cheque was the property of the Workers' Party but, having regard to the nature and content of the defence on the issue of Dr. Chew's intention, the defence should have called her as a witness who could give evidence in support of Jeyaretnam's evidence.

Next, it was the prosecution's case that on the undisputed facts which I have outlined earlier in this judgment, the $2000 cheque was delivered by Wong and Jeyaretnam to Murugason & Co., solicitors for Madam Chiew, with intent to defraud the creditors of the Workers' Party and that, at the time of its delivery, they knew it to be likely that they would thereby prevent the distribution according to law of its proceeds among the creditors of the Workers' Party, in particular Tay Boon Too, a judgment creditor. Apart from the main defence that the cheque was not the property of the Workers' Party, the defence rested solely on Jeyaretnam's evidence.

Briefly, his evidence was that the Council and Members of the Workers' Party felt that they were morally obliged to help Madam Chiew pay the taxed costs she had to pay after her unsuccessful Election Petition because she was the mother of his election agent and if she had succeeded "it meant that we would have another go at the elections and may have succeeded". He testified that Council members were told they should try to get help from friends not in their official capacity but in their own capacity and that "it was not intended to be an official Workers' Party action". He also testified that the cheque was endorsed a day or two after its receipt by him and at that time the costs owing by the Workers' Party to Tay Boon Too was furthest from his mind because "we knew that six years had passed since the costs of the suit had been taxed and (Tay Boon Too) had given up recovering his costs". It was also his evidence that only after the endorsement and after the endorsed cheque was handed over to Wong for transmission to Murugason & Co. that he received the letter of demand dated January 22, 1982 from Tay Boon Too's solicitors.

The trial judge came to the conclusion that the prosecution had failed to prove these essential ingredients. It is necessary that I reproduce the relevant passages in his Grounds of Decision. They read as follows:

"Essential ingredients not proved

Even if one were to accept that they were the property of the Workers' Party, it had also to prove two other essential ingredients. These were that when the $2000 cheque was endorsed then delivered to M/s Murugason & Co., and when the proceeds from the $200 cheque were given to Murugason & Co., they were done with the knowledge that it was likely that they would prevent the distribution of those cheques according to law amongst the creditors of the party; and in so doing, they acted fraudulently'.

In the absence of any evidence to the contrary, I was unable to accept the prosecution's contention that what the second accused had said was not true.

In regard to the $200 cheque, it was received by Wong on March 10, 1982, two days after the order absolute was made garnishing the balance of the Party's monies in its Bank of China account. Could it then be said that the failure to pay Ping's $200 cheque into the Party's bank account, assuming that it was intended for the Party, was done fraudulently to prevent it reaching Tay Boon Too's hands?

The evidence did not suggest that it was.

The prosecution on this charge was largely based on the erroneous belief that had this cheque been paid into the Workers' Party bank account, 'the judgment creditor Tay Boon Too would have received this amount in view of the Garnishee Order made' (see page 11 of Mr. Knight's submission made at the close of the prosecution's case).

It is patently clear from the law of garnishee proceedings as set out in order 49 of the Rules of the Supreme Court, that there was no such entitlement of Tay Boon Too to the proceeds of Ping Koon Yam's $200 cheque, even if it had been banked into the account. The order *nisi* was made on February 22, 1982 and therefore would have attached all sums in the Party's account 'as from the service of

order' on the bank (see order 49 r.3). While money standing to the credit of a judgment debtor at his bank is attachable, money paid in after service of the garnishee order *nisi* on the bank, is not (see *Heppenstall* v. *Barclays Bank, Ltd* [1939] 1 K.B. 585, C.A.).

In the present case, not only was Ping Koon Yam's cheque for $200 given after the order nisi was served on the bank, it was given on March 10 1982, two days after the garnishee order was made absolute.

Had the two cheques been first banked into the Party's bank account, and then paid out to Madam Chiew's solicitors there would have been no grounds for the prosecution to complain. This was borne out by the testimony of the prosecution's own witness Keith Tay, a senior partner of a firm of public accountants (see page 65 of the Notes of Evidence). Would the fact that they were not have made any difference? Perhaps, but only from the accounting viewpoint, since the payee were the Workers' Party.

Having regard therefore to all the circumstances surrounding the receipt of the cheques, the time of their receipt and their eventual disbursement to the solicitors of Mdm Chiew and the reasons therefor, I was not satisfied that the acts of the accused in the delivery of the cheques were done with a fraudulent intention to prevent their distribution according to law, amongst the creditors of the party.

Even if the two cheques had belonged to the Workers' Party, Tay Boon Too had not, at the time the two cheques were received, then endorsed over, obtained any right or title to their proceeds. Consequently it could not be said that he had any right to the distribution of the proceeds according to law (see *Ismail Peer Mohamed* v. *The King* A.I.R. 1938 Rangoon 242)."

In my judgment, these passages disclose errors on the part of the trial judge. First, in the passage beginning "In the absence of any evidence to the contrary" it seems to me that he failed to take into consideration the undisputed facts relied on by the prosecution together with such inferences as may be drawn from the proved facts and failed to weigh that evidence against Jeyaretnam's evidence before coming to the conclusion that Jeyaretnam's evidence could not be untrue. In my judgment this was a serious misdirection.

Secondly, the trial judge erred in his finding that "there would have been no grounds for the prosecution to complain" had the cheques been first banked into the Workers' Party bank account and then paid out to Madam Chiew's solicitors. He based his finding on the evidence of Keith Tay, an accountant which was as follows:

"Q. Take the $2000 cheque. *Assume that Jeyaretnam was entitled to pay the Election Petition costs of Mdm Chiew from a donor.* He gets a cheque made out to the Workers' Party for $2000. Is it your evidence that if the cheque had been paid into the Workers' Party account and then paid to Murugason, it would be perfectly all right?

A. Yes, provided it is reflected in the accounts." (The emphasis is mine.)

In my judgment the trial judge misconstrued the evidence of Mr. Keith Tay. It is clear that the answer was in response to the question which required the witness to assume as a fact that *Jeyaretnam was entitled* to pay Madam Chiew's costs "from a donor", the donee being Jeyaretnam.

Thirdly, accepting the defence evidence that the reason for the "eventual disbursement to the solicitors of Madam Chiew" was because the Council members of the Workers' Party felt they were morally obliged to help her pay the costs of her unsuccessful Election Petition, the trial judge, in my judgment, was wrong in his conclusion that that evidence, *inter alia,* was favourable to the defence on the question of a fraudulent intention to prevent the distribution of the proceeds of the cheque among the creditors of the Workers' Party. At best, it was, in my opinion, neutral evidence.

Lastly, in my judgment the trial judge erred in law in relying on the Rangoon case of *Ismail Peer Mohamed (supra)*[3] for the finding that even though the cheque was the property of the Workers' Party, Tay Boon Too had not obtained any right or title to its proceeds and consequently had no right to the distribution of its proceeds according to law. The appellant in that case was prosecuted under section 421 of the Indian Penal Code which is identical with our section 421. This section reads:

"421. Whoever dishonestly or fraudulently removes, conceals, or delivers to any person or transfers or causes to be transferred to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment for a term which may extend to two years or with fine, or with both."

Although the facts be found in the judgment of Mackney J., the report does not contain the charge the appellant faced. The facts were that the appellant, who retailed piecegoods in two stalls, felt unable to satisfy all the creditors who had supplied him with goods. He proposed a scheme of composition to four selected creditors and handed custody of his goods in his stalls to them. The proposed scheme fell through because some of his creditors were unwilling to accept it. Thereupon, he recovered possession of his goods and sold them without settling his debts. On these facts

the appellant was convicted as the magistrate was of the opinion that "by removing his goods and disposing of them he deprived his creditors of their right to attach them and realise their debts out of the proceeds of the sale thereof; so he had caused wrongful gain to himself and wrongful loss to his creditors."

On appeal, Mackney, J. reversed the order of conviction on the ground that as the proposed scheme fell through the appellant was entitled to take back his own goods as if the scheme had never been thought of. Consequently, the creditors had never obtained any right or title to these goods so that any subsequent disposal of them by the appellant without making any payment to his creditors was not an offence under section 421 *without proof of fraudulent conduct.* The learned judge expressed the opinion as to what may or may not amount to fraudulent conduct under section 421 at page 243 in a passage which reads:-

"It is not sufficient to show that his action may deprive them of a recourse of which if they had acted in time they might have availed themselves. It is not shown in the present case even that any of his creditors were about to bring suits to recover their debts. There is further nothing to show that by pretending to be willing to come to an agreement he had stayed off any suits."

The *Rangoon case* is accordingly no authority for the proposition that unless a creditor has obtained some right or title to the property of a debtor, he has no right to the distribution according to law of that property or of its proceeds.

Accordingly, the first question is, with what intent was the $2000 cheque, the property of the Workers' Party, delivered. Had the prosecution at the conclusion of the trial proved beyond a reasonable doubt that the cheque was delivered to Madam Chiew's solicitors with intent to defraud the creditors of the Workers' Party? What were the facts?

The Workers' Party owed as at July 1975 Tay Boon Too, a judgment creditor $17,101.00 and the Attorney-General $15,189.00. Several letters of demand which were unfruitful were sent by the Attorney-General to Jeyaretnam & Co., solicitors for the Workers' Party of which the last material letter was dated January 29, 1981. Two letters of demand to which there was also no response were sent by Tay Boon Too to Jeyaretnam & Co., the first dated July 16, 1975 and the other dated January 23, 1982. No action was taken to enforce these judgment debts because the Workers' Party had no assets to satisfy them by way of execution or other enforcement proceedings. The letter of demand by Tay Boon Too dated January 23, 1982 which was sent to and received by J.B. Jeyaretnam & Co. as solicitors for the Workers' Party specifically threatened execution proceedings if payment was not made by January 27, 1982.

The $2000.00 cheque, which was dated January 19, 1982, was from Dr. Chew, a friend and supporter of the Workers' Party, which she sent by post to Jeyaretnam. It was, as I have found, a gift from her to the Workers' Party. After Jeyaretnam received it, he and Wong decided to make a gift of the $2000.00, the sum specified on the face of the cheque, to a Madam Chiew, who was not a creditor of the Workers' Party. Having so decided, as authorised signatories of the bank account of the Workers' Party, they endorsed the cheque in favour of Madam Chiew's solicitors to enable her to use the proceeds of the cheque to stave off imminent bankruptcy proceedings against her. They made this gift of the Workers' Party's property because they felt that they and the other members of the Workers' Party were personally morally obliged to help her.

The cheque was handed over by Wong to Madam Chiew's solicitors on March 16 or 17, 1982 and its proceeds were subsequently paid to her judgment creditor. Until it was handed over to her solicitors, the cheque remained the property of the Workers' Party because it being a negotiable instrument the property in the cheque did not pass to her until delivery, actual or constructive to her. Moreover, as it was an intended gift to her, the gift was incomplete until delivery of the cheque.

On these facts it is clear that Wong and Jeyaretnam, who were the Chairman and Secretary-General respectively of the Workers' Party, knew, before they decided to donate the proceeds of the cheque to Madam Chiew, that the Workers' Party was unable to satisfy all its creditors and that they knew that two judgment creditors had not given up their right to enforce payment of the judgment debts. With that knowledge they nevertheless decided to give away the proceeds of the cheque to a person who was not a creditor of the Workers' Party. They carried out their decision by endorsing it as authorised signatories, in favour of the intended donee's solicitors and by Wong handing possession of the cheque to her solicitors to enable her to stave off imminent bankruptcy proceedings against her by a judgment creditor. In my judgment, in all the circumstances the in-

ference clearly arises that by their acts they intended to place the proceeds of the cheque, when cashed, out of the reach of the creditors of the Workers' Party and in particular, Tay Boon Too, a judgment creditor, in circumstances which constitute an intent to defraud within the meaning of section 421.

Their defence on the question of intent to defraud rested on Jeyaretnam's evidence that the cheque was not a gift from Dr. Chew to the Workers' Party because of the alleged note and its contents which accompanied the cheque sent to him. If this piece of evidence is accepted it is plain that any dealing by Wong and Jeyaretnam in respect of the cheque could not amount to an intent on their part to defraud the creditors of the Workers' Party.

Earlier in this judgment I have rejected this evidence and accordingly I find that it did not displace or cast a reasonable doubt on the inference of fraudulent intent that clearly arose from the prosecution evidence.

Another piece of evidence from Jeyaretnam that has to be considered on the question of intent to defraud is his bare assertion that when he and Wong endorsed on the back of the cheque the words "pay to Murugason & Co." and signed against that endorsement he had not received Tay Boon Too's letter of demand dated January 23, 1982 which threatened enforcement proceedings against the Workers' Party if the judgment debt was not paid. Jeyaretnam also gave evidence that at that time he did not have in his mind the Workers' Party's debt to Tay Boon Too, because he knew that it was incurred more than six years' ago and that Tay Boon Too had given up recovering it. Can this evidence be accepted when considered against the following undisputed facts?

(1) Jeyaretnam received the cheque which was dated January 19, 1982 at the latest on the following day.

(2) The cheque was delivered to Murugason & Co. on February 16 or 17, 1982 to stave off imminent bankruptcy proceedings against Madam Chiew with the endorsement on its back "pay Murugason & Co." and their signatures as authorised signatories of the bank account of the Workers' Party.

(3) Before the actual delivery of the cheque Jeyaretnam had received Tay Boon Too's January 23, 1982 letter of demand.

(4) Before the actual delivery of the cheque Murugason & Co., the solicitors for Madam Chiew, had been informed on February 12 by her judgment creditor's solicitors that an order for substituted service of a Bankruptcy Notice had been obtained in respect of a judgment debt of $5,425.25.

(5) Madam Chiew's debt was the result of an Election Petition instituted by her to unseat a person elected to Parliament in which Jeyaretnam was the unsuccessful candidate for the Workers' Party.

(6) The Workers' Party was not legally obliged to assist her to pay the debt.

Apart from these enumerated undisputed facts there is a passage in the Grounds of Decision of the trial judge on the credibility of Wong and Jeyaretnam. The passage reads:

> "In deciding to accept the defence on the other two charges, I was fully conscious of the lie told in explaining away Willie Lim's cheque, and of the contradictions in the testimonies of both the accused, *inter se*, and with their statements. However, to have rejected their evidence on the other two charges outright, despite other supportive evidence would in my opinion have been wrong."

This passage is an indication that the trial judge was of the view that unless there was other supportive evidence he was not prepared to accept their evidence.

In all these circumstances, I cannot accept Jeyaretnam's evidence that he and Wong endorsed the cheque a day or two after he received it from Dr. Chew and upon a proper consideration of the evidence as recorded by the trial judge the conclusion I come to is that the endorsement was made after Jeyaretnam had received Tay Boon Too's letter of demand dated January 23, 1982. There was no explanation why, if the endorsement was made at the time alleged, the cheque was not delivered to Murugason & Co. until almost a month later. In the absence of any plausible explanation, it seems to me highly improbable that a person who had decided to negotiate a cheque to another would endorse it and then retain possession of the endorsed cheque for so long before delivering it to the endorsee.

The final question is whether, at the time the cheque was delivered by Wong to Murugason & Co., Wong and Jeyaretnam knew it to be likely that they would thereby prevent the distribution *according to law* of its proceeds amongst the creditors of the Workers' Party, in particular, Tay

Boon Too, a judgment creditor. The contention was raised at the trial that a society, registered under the Societies Act, (Cap. 262) cannot be wound-up on the ground of insolvency. It was submitted that there is no provision under the Societies Act for a registered society to be wound-up on the ground of insolvency and that both the Bankruptcy Act (Cap. 18) and the Companies Act (Cap. 185) do not apply to a society such as the Worker's Party and accordingly, that "there is no law governing the distribution of its property among its creditors". In the result, it was submitted that there could be no successful prosecution under section 421 of the Penal Code in respect of fraudulent disposal of property belonging to a society registered under the Societies Act and consequently, on this ground alone Wong and Jeyaretnam were entitled to be acquitted.

Though the submissions as regards the position in law under the Societies Act and the Bankruptcy Act are well founded, the submission that the Companies Act do not apply to a registered society is, in my opinion, untenable.

An examination of sections 314 and 315 of the Companies Act is necessary. Section 314(1) of the Companies Act provides:

"314. – (1) For the purposes of this Division 'unregistered company' includes a foreign company and any partnership association or company consisting of more than five members but does not include a company incorporated under this Act or under any corresponding previous written law."

It is clear that the Worker's Party which is an association, albeit a political association, consisting of more than five members, is an unregistered company within the meaning of section 314(1). Section 315(1) so far as material provides:

"315.– (1) Subject to this Division any unregistered company may be wound up under this Part, which Part shall apply to an unregistered company with the following adaptations:–

(c) (i) .....

(ii) if the company is unable to pay its debts;

(iii) if the Court is of opinion that it is just and equitable that the company should be wound up."

It is therefore plain that section 315 can be invoked as the Worker's Party was, on the facts before the court, "unable to pay its debts" and could on that ground be wound-up.

The defence however relied on the authority of *Re St James' Club*[4] to support its submission that the Companies Act do not apply to a society like the Worker's Party. Though this case is authority for the proposition that clubs "in the ordinary acceptance of the term" do not fall within the expression "association" appearing in the English equivalent of our section 314, in my judgment, it is only an authority on clubs and not on societies registered under a statute enacted for their regulation.

Our Societies Act is the equivalent of the United Kingdom Friendly Societies Act and the Courts have consistently held that such registered friendly societies are "unregistered companies" under the Companies Act and can be wound up by the Court under that Act. In the case of *Independent Protestant Loan Fund Society*[5] the facts were that the society was registered under the Friendly Societies Act 1855 but it was not registered under the Companies Act 1862. Section 199 of that Act so far as material provides:–

"199. Subject as hereinafter mentioned, any Partnership. Association, or Company, ... consisting of more than Seven Members, and not registered under this Act ... may be wound up under this Act, ...

(3) The Circumstances under which an unregistered Company may be wound up are as follows (that is to say)

(a) ....

(b) Whenever the Company is unable to pay its Debts;

(c) Whenever the Court is of opinion that it is just and equitable that the Company should be wound up;

The petitioner, who was a member of the Society, claimed to be a creditor in respect of £70 deposited with the Society and for the withdrawal of which he gave notice. The Society had liabilities of a considerable amount to members who had funds to their credit in the Society for their subscriptions. It owed nothing to outside creditors save a trifling sum of costs due to a person who opposed the making of a winding up order. The funds of the Society were not sufficient for payment in full of all the sums due to its members. At a duly convened meeting of the Society resolutions were unanimously passed that it should be wound up voluntarily and under the supervision of the Court.

The Vice Chancellor, in his judgment, held that under section 199 of the Companies Act, on an application by a withdrawing member the court could make a compulsory winding up order whenever the Court is of the opinion that it is just and equitable that such an order should be made. He relied on the observations of Lord

Romilly M.R. in the case of the *Planet Benefit Building and Investment Society.*[6]

A more direct authority is the case of the *Re Ironfounders' (Bradford Branch) Social Club and Institute.*[6] The facts were that the Ironfounders (Bradford Branch) Social Club and Institute was registered under the Friendly Societies Act 1896, but was not registered under the Companies (Consolidation) Act 1908. It was a friendly society which was a working men's social club consisting of more than seven members with no share capital and it owed a creditor over £798. It had failed to pay the creditor after a demand for payment and was insolvent. The creditor petitioned the High Court to wind up the friendly society as an unregistered company under the provisions of the Companies (Consolidation) Act 1908 which relate to the winding-up of unregistered companies on the ground that it was unable to pay its debts. The Court ordered it to be wound up even though it was a social club with no share capital. It seems to me that the distinction between mere clubs, such as the St. James Club in the *Re St James' Club case (supra),* where it was held that it was not an unregistered company under the then Companies Act, and an association of persons, whether called a club or not, which is registered under the Friendly Societies Act is that the latter has a "pseudo-corporate existence by virtue of the statute law which regulates (its) activities" (*per* Johnston J. in *Feeney and Shannon* v. *MacManus & Ors.*[8]).

In my judgment, it cannot be attributed to the legislature the intention to exempt societies registered under the Societies Act from the jurisdiction of the Courts to make a winding up order. Section 314(1) of the Companies Act expressly defines the term "unregistered company" to include any association of five or more members and section 2 of the Societies Act expressly defines the term "society" to include "any ... association of ten or more persons whatever its nature or object". I am of the opinion that it could not have been the intention of the Legislature to exempt any association of ten or more persons which is registered as a society under the Societies Act from the provisions of section 315 of the Companies Act especially when the Act and the regulations made thereunder require it to have a registered place of business. To conclude otherwise would result in a registered society which is unable to pay its debts, however recklessly incurred, being able to continue its activities and incur more liabilities until it can be dissolved under the provisions of the Societies Act.

The Section 421 Penal Code Charge arising out of Ping's $200.00 cheque

The undisputed evidence was that a Mr. Ping Koon Yam ("Ping") issued an order cheque dated March 10, 1982 for $200.00 drawn on The Overseas Union Bank. The Workers' Party was the named payee and the printed words "or bearer" had been cancelled but subsequently reinstated against Ping's signature. On the back of the cheque were the signatures of Jeyaretnam as Secretary-General and of the Treasurer of the Workers' Party. Instead of the cheque being presented for payment into the account of the Workers' Party with the Bank of China it was presented, cleared for payment and credited to the personal account of Wong with the Bank of America. The Workers' Party did not receive from Wong the proceeds of this cheque.

The defence was that Ping never intended to transfer the property in the cheque to the Workers' Party in that although on the cheque the name "Workers' Party" appeared as the payee, Ping told Jeyaretnam through Wong as interpreter that "he understood the Workers' Party was helping Madam Chiew pay her legal costs and he also wanted to contribute $200.00 to help towards the costs." This evidence was not given by Ping who did not give evidence at the trial although he was an available witness. It came from Wong.

Wong's evidence was that on March 10, 1982, during a Meet-the-People session held by Jeyaretnam who was a Member of Parliament, they were seated at the Void Deck of Block 135, Jalan Bukit Merah when a man came up to them. The man spoke in Hokkien requesting him to interpret to Jeyaretnam the words which I have earlier set out and handed a cheque to Jeyaretnam who passed it to him. He saw that the words "Workers' Party" were written in Chinese Characters on the cheque and the printed words "or bearer" had been cancelled. He then suggested to Ping (the signature of the drawer of the cheque was in Chinese which in English translates into Ping Koon Yam) that as it was intended as a donation to Madam Chiew, Ping could either make out a fresh cheque or lift out the cancellation of the words "or bearer". Ping then lifted out the cancelled words, signed beside those printed words and then left. He kept the cheque and on March 12, 1982 banked it into his own bank account. Two or three days after

banking the cheque he took $200.00 cash from his office petty cash and placed it inside an envelope on which he wrote Ping's name. He kept this money until he took it, with other cash donations for Madam Chiew, to her solicitors' office where he handed over $2,655.00 cash.

Jeyaretnam's evidence was that he remembered that in one of his Wednesday evening sessions in March 1982 at the Void Deck at Block 133 Jalan Bukit Merah for his constituents a man holding a cheque spoke to Wong in Chinese. To the best of his recollection Wong told him that the man wanted to give something for Madam Chiew's costs and either Wong or the man handed the cheque to him. He did not know who the cheque was made out to as it was written in Chinese. After he was given the cheque he shook hands with and thanked the man and then passed the cheque on to Wong. Wong told him that perhaps he had to sign it so that they could get the money for Madam Chiew and so he signed it and left it with Wong and thereafter he never saw the cheque again.

When cross-examined he admitted that he must have been told that the cheque was made payable to the Workers' Party and that he did not see Ping again after that evening. He also admitted that he wrote a letter dated March 16, 1982 to the Registrar of Citizens concerning Ping's application for citizenship and sent a copy of it to Ping to the address given by Ping but he was uncertain whether Ping spoke to him about the citizenship problem on March 10, 1982. He also admitted that it would appear that between January and June 1982 when Tay Boon Too was pressing for payment that Wong was repaying himself from Party funds and his explanation was – in his own words – "but I can't see anything wrong in that. Tay Boon Too is among one of the creditors. We had others as well. Tay Boon Too was not a preferred creditor ..."

The trial judge in his Grounds of Decision did not expressly say that he accepted Wong's and Jeyaretnam's evidence that Ping gave his cheque to help towards paying Madam Chiew's indebtedness for costs. He dealt with a piece of brown paper which Wong produced as part of an envelope on which Wong had written the names and amounts of donations made by people who had made cash contributions to help pay off Madam Chiew's indebtedness. According to Wong the piece of paper, which was only produced during cross-examination, was cut off from the envelope and the writing on it showed a complete "contemporaneous record of all monies received on behalf of Madam Chiew" and showed "a collection of $2,655.00 in cash" as well as the names of the donors. Wong said that the piece of paper had Ping's name written on it "on the day following Ping's cheque being deposited into the bank" and in the same breath he added "The record was made the day I received the cheque.". This was patently inconsistent evidence as Wong had earlier said that he deposited Ping's cheque into his bank on March 12, 1982 after its receipt by him which was on March 10, 1982.

The question remains whether Wong's account of what Ping said when he handed his $200 cheque to Jeyaretnam can be accepted as true. The defence did not call Ping although he was available at the trial to give evidence. In my view, having regard to the defence that the property in Ping's cheque was never transferred or intended to be transferred to the Worker's Party, it was incumbent on the trial judge to decide this question on the entire evidence before him. In his Grounds of Decision the trial judge merely set out briefly Wong's evidence and failed to make an explicit finding on this question. The material passage in the Grounds of Decision reads as follows: –

"The $200 cheque from Ping Koon Yam

Evidence was given by both accused of the circumstances surrounding the receipt of this cheque by the accused Wong on March 10, 1982, and of the express intention of the donor Ping Koon Yam that it was given to assist Mdm Chiew pay her costs. It was initially made payable to the Workers' Party with the word "bearer" crossed out. The accused Wong then explained that because of the donor's expressed intention, he had asked Mr Ping to either make out a fresh cheque in Mdm Chiew's favour, or to alter it to a bearer cheque in order to facilitate payment over to her solicitors.

If Ping had decided to issue a fresh cheque made out to Mdm Chiew, there would have been no cause for complaint.

He decided instead, to alter the cheque to a bearer one by overriding the cancellation on the word "bearer". It was in fact banked into Wong's personal account on March 12, 1982, for which he claimed he gave $200 in cash of his own money in exchange. This $200 cash was, he claimed, among the sum of $2,655 handed over to Murugason & Co, who in turn handed that sum over to the solicitor for Mdm Chiew's Judgment creditor on March 12, 1982."

If the correct inference from that passage was that the trial judge accepted Wong's account of what Ping said, it is clear that he did not base it on his acceptance of Wong as a reliable and credi-

ble witness and that he failed to observe, analyse or consider the undisputed facts and material probabilities. In these circumstances an appellate court is in as good a position as the trial court to decide the question. The facts which were proved by the prosecution, which facts were not disputed by the defence, were these. Ping's cheque was a crossed cheque made out in favour of the Workers' Party. The cheque was altered by Ping into a cheque made payable to the Workers' Party or bearer. The cheque was received by Jeyaretnam and it was subsequently endorsed by the Workers' Party and paid into Wong's personal account. On these undisputed facts the property in the cheque clearly passed to the Workers' Party when Ping handed it in its unaltered form to Jeyaretnam and also remained in the Workers' Party in its altered form.

It seems to me to be plain that by naming the Workers' Party as the payee in his cheque Ping's intention must be taken to have been that the property in the cheque should pass to the Worker's Party as a donation from him.

In considering whether Wong's account should be believed and thereby negate that inference it was essential to consider, not only Wong's evidence, but the entire evidence or the absence of material evidence before the court. The defence did not adduce evidence that the Workers' Party was soliciting the public for contributions to help towards paying a judgment debt owed by Madam Chiew in order to avoid her being made a bankrupt. The defence did not adduce evidence that Ping was a member of the Workers' Party. The defence did not adduce evidence that Ping and Madam Chiew knew each other or that Ping knew of Madam Chiew's predicament. In the absence of such evidence was it likely that Ping was aware of Madam Chiew's predicament and even if he was so aware was it likely that he would wish to help her and, if so, would he draw a cheque, not in her favour, but in favour of the Workers' Party as a direct donation to her and bring his cheque to Jeyaretnam's Meet-the-People session? If Wong's account was true was it likely that Ping, when altering his cheque, would not at the same time have cancelled the name of the Workers' Party as the payee and substituted the word "cash"? There was also the undisputed evidence that soon after Ping handed over his cheque Jeyaretnam as a Member of Parliament wrote to the Registrar of Citizens on Ping's behalf concerning Ping's citizenship application. Having regard to this fact, was Ping, in seeking a Member of Parliament's assistance concerning his citizenship application, intending to make a donation to that Member's political party or intending to make a contribution to help a particular individual who was in need of financial help when he wrote the crossed cheque in favour of the Worker's Party and brought it with him to Jeyaretnam's Meet-the-People Session on March 10, 1982? The trial judge appears to have failed to observe, analyse or consider all these material facts and circumstances and in failing to do so, in my judgment, erred in his approach to the evidence of Wong and in accepting Wong's account of what Ping said when he handed his cheque to Wong.

In my judgment, on a full consideration of the material evidence and the circumstances and bearing in mind that an appellate court should be slow in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses but is nonetheless duty bound to review at large the evidence upon which that finding was reached, I am satisfied that the trial judge was wrong in accepting Wong's account and finding that Ping had no intention of transferring the property in his cheque to the Workers' Party.

As to the question of fraudulent intent the facts were that Ping had on March 10, 1982 made a donation of $200.00, the proceeds of his $200 cheque to the Workers' Party. Jeyaretnam had endorsed Ping's cheque for the purpose of and thereby enabled Wong to clear it through his own bank account to enable its proceeds to be handed over to Madam Chiew's solicitors for payment of her debt to a judgment creditor. On February 20, 1982 a judgment creditor, Tay Boon Too, of the Workers' Party had obtained leave to levy execution against the Workers' Party in respect of an unsatisfied judgment debt. The Workers' Party had insufficient assets to pay the unsatisfied judgment debt. Wong and Jeyaretnam were aware of the execution proceedings taken out by the judgment creditor and as the Chairman and Secretary-General respectively of the Workers' Party must have been aware of its financial position. On these facts the inference is irresistible that by their acts they intended to place the proceeds of Ping's $200.00 cheque, which was the property of the Workers' party out of the reach of its creditors and in particular, Tay Boon Too, in circumstances which constitute an intent to defraud within the meaning of section 421 of the Penal Code.

The Section 421 Penal Code Charge arising out of Willie Lim's $400.00 cheque.

Jeyaretnam and Wong were convicted on this charge and were each fined $1,000.00. They now appeal against their convictions and the Public Prosecutor is appealing against the sentence. The prosecution evidence can be briefly stated.

On May 22, 1982 one Willie Lim Thian Tze, in Jeyaretnam's presence, handed to Wong an order cheque made out in favour of the Workers' Party for $400.00 drawn on the Overseas Chinese Banking Corporation. It was a donation by Willie Lim to the Workers' Party. In June 1982 Willie Lim was asked to go to the Workers' Party branch where Jeyaretnam was holding a Meet-the-People Session. On arrival Wong took him into a partitioned office where he was told by Wong in Jeyaretnam's presence to alter his cheque to a cash cheque made payable to bearer "because the Party's funds were with the Official Receiver". He complied with the request and he handed the altered cheque to Wong. The cheque was cashed by a person unknown on July 2, 1982.

In his defence Jeyaretnam said "I really can't say if I saw the cheque at all ... I can't recall seeing him at any time altering the cheque ... I did not deal in any way with the cash that may have arisen from the cheque". The trial judge noted in his Grounds of Decision that the defence did not put to Willie Lim or suggest that Willie Lim's evidence that Jeyaretnam was present "to my front, to my left" when Wong requested him to alter the cheque in Jeyaretnam's office was not true. He accepted Willie Lim's evidence that the alteration was done in Jeyaretnam's office. He found that Jeyaretnam was fully aware of what had taken place and that from the conduct of Wong and Jeyaretnam, when the cheque was retained by Wong and then handed to an unknown person to be encashed on July 2, 1982 instead of being handed over to the receiver, they were acting in concert.

The arguments advanced on behalf of Wong and Jeyaretnam are as follows: (1) The $400 given by Willie Lim to the Workers' Party was as to $340 disposed of by the Workers' Party to its use at the end of May 1982 when Wong set off the amounts he had paid on behalf of the Party and given the balance of $60 to the Party's Treasurer; (2) that after that date (end of May 1982) only $60 of the $400 remained as the Party's funds, the other $340 having been paid to the use of the Workers' Party. The $60 formed part of the sum of $809 that was handed over to the Official Receiver; after that date the Workers' Party had no longer any right to the monies in the cheque; (3) it did not matter whether Wong had paid the printing costs of $300.00 before he set off that amount before the end of May 1982 or had paid the printing costs between end May 1982 and July 2, 1982 when the cheque was cashed because on July 2, 1982 all the monies represented by that cheque belonged to Wong.

I reject these arguments because they ignored the finding of fact by the trial judge that the cheque was altered after June 3, 1982 and the findings of fact were wrong.

It is also argued on behalf of Jeyaretnam that his mere presence when Willie Lim first handed the cheque and later when Willie Lim altered the cheque at Wong's request was insufficient in law to afford evidence that he and Wong acted in concert. I reject this argument. These two events, according to the evidence which was not challenged by the defence, took place in Jeyaretnam's private office which was partitioned off from the rest of the premises rented by the Workers' Party. Furthermore, the trial judge expressly found that Jeyaretnam "was fully aware of the transaction" *i.e.* the events in Jeyaretnam's private office. It was a finding which in my judgment was justified on all the evidence before the trial judge.

For all these reasons the Public Prosecutor's appeals against the acquittals of Wong and Jeyaretnam on the section 421 Penal Code charges numbered DAC 4153/83 and DAC 4154A/83, are allowed and the appeals of Wong and Jeyaretnam against their convictions on the charge numbered DAC 4154/83 are dismissed.

I find Wong and Jeyaretnam guilty in respect of the charges numbered DAC 4153/83 and DAC 4154A/83 and I sentence each of them to pay a fine of $1,000.00 in respect of each, charge and in default to serve imprisonment for a period of three weeks.

Finally, in view of the fines I have just imposed, I dismiss the Public Prosecutor's appeal against the adequacy of the fines imposed by the trial judge on Wong and Jeyaretnam in respect of their convictions on the charge numbered DAC 4154/83.

Order accordingly.

Solicitors: *J.B. Jeyaretnam & Co.; M.P.D. Nair & Co.*